IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH
S.B. Civil Writ Petition No.1007/2007
Surinder Nath Kapoor Vs. JDA & Ors.

12.04.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Manoj Sharma for petitioner.

This writ petition has been filed challenging the judgment dated 2.12.2006 passed by the Jaipur Development Authority Appellate Tribunal, Jaipur whereby the application of the petitioner for initiating the contempt proceedings against the non petitioner no.2 to 5 respectively Commissioner, Secretary, Deputy Commissioner and Enforcement Officer of JDA, was rejected.

I have heard Shri Manoj Sharma, the learned counsel for the petitioner and perused the material on record. He argued that the Tribunal refused to initiate

the contempt proceedings against respondents without appreciating the actual controversy in the matter. The Tribunal dismissed the contempt petition on the unfounded ground that the respondents have not changed the status quo of the plot and has rather proceeded on the assumption that the petitioner proceeded to file the contempt petition on the basis of mere apprehension. The Tribunal thus committed error of law in not taking action against the respondents because it was established on record that in spite of the status quo order by the Tribunal, the respondents made an attempt to make a way through the property of the petitioner and issued a notice to the petitioner. The officers of the JDA came to the property of the petitioner and threatened to demolish the constructions. Their conduct was wholly contemptuous.

On perusal of the order of the Tribunal it is

found that the Tribunal in its order has come to the conclusion that except that the petitioner asserted that three of the respondents went to the site, no evidence has been produced which proves that in spite of the order of status quo passed by the Tribunal, the respondents altered the ground position or created a way through the land of the petitioner so as to violate the status quo order passed by the Tribunal or made any uncharitable remarks about the Tribunal. So far as the issuance of mere notice under Section 72 of the JDA is concerned, the Tribunal found that it was the statutory duty of the JDA to issue notice under Section 72, but that did not show that any of the provisions of that Act have been violated by mere issuance of notice and it cannot be accepted as a matter of contempt.

I am inclined to agree with the view taken by the Tribunal that checking construction without

permission cannot be taken as violation of the status quo order passed by the Tribunal and did not make out a case for contempt. In order to make out a case of contempt, what is required is that in spite of the order passed by the Court or the Tribunal, some overt act was made by those responsible for complying with that order which can be descried as willful or deliberate overt act or action on their part. It is such overt act on their part which will bring the action complained of within the purview of contempt. I therefore do not find any infirmity in the order passed by the Tribunal.

The writ petition is dismissed.

(Mohammad Rafiq),J.

RS/-